

REMARKS/ARGUMENTS

Reconsideration of this Application and entry of this Amendment is respectfully requested.

35 U.S.C. §102 Rejections

Claims 34-36 have been rejected under 35 U.S.C. §102(e) as being anticipated by Alvarado, *et al.* (U.S. Patent No. 6,530,950).

A claim is anticipated only if each and every element as set forth in the claim is found, either expressly or inherently described, in a single prior art reference. *Verdegaal Bros. v. Union Oil Co. of California*, 814 F.2d 628, 631, 2 USPQ2d 1051, 1053 (Fed. Cir. 1987). The identical invention must be shown in as complete detail as is contained in the . . . claim. *Richardson v. Suzuki Motor Co.*, 868 F.2d 1226, 1236, 9 USPQ2d 1913, 1920 (Fed. Cir. 1989). Thus, to warrant the §102(e) rejection of claims 34-36, U.S. Patent No. 6,530,950 to Alvarado, *et al.* (the *Alvarado* patent) must show each and every limitation of independent claims 34, 35, and 36 in as complete detail as contained in the independent claims. The Applicant has thoroughly considered the Examiner's Office Action mailed September 7, 2005, and respectfully suggests that the *Alvarado* patent fails to meet this requirement.

Independent Claim 34: In the Response to Arguments section of Office Action mailed September 7, 2005, the Examiner asserted that the *Alvarado* patent "at least discloses the use of two different therapeutic agent[s]." The Examiner cites Column 14, lines 7-20 and lines 30-34, of the *Alvarado* patent, which discloses a variety of therapeutic agents. This is not what the Applicant claims, however. Independent claim 34 recites that individual bands of the plurality of bands contain different therapeutic agents, i.e., that not all the bands contain the same therapeutic agents. All the polymer members as disclosed in the *Alvarado* patent are the same, without any difference in the therapeutic agents. Therefore, the *Alvarado* patent fails to disclose each and every limitation of independent claim 34, i.e., wherein individual bands of the plurality of bands contain different therapeutic agents. Reconsideration of the rejection of independent claim 34 is respectfully requested.

Independent Claim 35: In the Response to Arguments section of Office Action mailed September 7, 2005, the Examiner asserted that the *Alvarado* patent "at least discloses the use of a variety of different polymers." The Examiner cites Column 13, lines 36-64, of the *Alvarado* patent,

which discloses a variety of polymers. This is not what the Applicant claims, however. Independent claim 35 recites that individual bands of the plurality of bands are made of different polymers, i.e., that not all the bands are made of the same polymers. All the polymer members as disclosed in the *Alvarado* patent are the same, without any difference in the polymers. Therefore, the *Alvarado* patent fails to disclose each and every limitation of independent claim 35, i.e., wherein individual bands of the plurality of bands are made of different polymers. Reconsideration of the rejection of independent claim 35 is respectfully requested.

Independent Claim 36: In the Response to Arguments section of Office Action mailed September 7, 2005, the Examiner asserted that “as seen in fig. 3c of *Alvarado*, elements 42a, 42b can be interpreted broadly as a first layer and a second layer.” The Applicant respectfully submits that elements 42a and 42b of Figure 3C of the *Alvarado* patent are flexible regions of the stent 10 and have nothing to do with layers. The *Alvarado* patent states as follows:

In accordance with another preferred embodiment of this aspect, a stent composed of a support stent having rigid and flexible regions, like that discussed above in FIG. 3A, and carrying one or more polymer members disposed about the rigid stent regions is contemplated. (Column 12, lines 41-45). These flexible regions are identified in FIG. 3C as regions 42a, 42b, 42C. (Column 12, lines 53-54).

Therefore, elements 42a and 42b of the *Alvarado* patent have nothing to do with layers as recited in independent claim 36.

The *Alvarado* patent discloses “polymer members coaxially about the outer stent surface only in the rigid stent regions, as are polymer members 40, 42, 44 and 46, leaving the flexible regions 42a, 42b, 42c, exposed or uncovered.” See Column 12, lines 55-58; Figure 3C. The polymer members 40, 42, 44 and 46 shown in Figure 3C have the same radial structure as continuous polymer sheath 30 shown in Figure 3B. See Figures 3B & 3C. Describing continuous polymer sheath 30 of the *Alvarado* patent, the sleeve “takes the form of a flat sheet rolled into a cylindrical or tubular shape by overlapping the edges 32, 34 of the sheet. It will be appreciated that the initial configuration of the tubular member is not limited to a flat sheet, but can also be prepared from an extruded tube-form or from a molded tube-form.” See Column 12, lines 35-40; Figure 3B. The polymer member is formed into a tubular configuration, either by extrusion or molding directly

into a cylindrical form or by wrapping a polymer sheet into a cylindrical configuration. *See* Column 13, lines 46-49.

The *Alvarado* patent fails to disclose the continuous polymer sheath 30 or polymer members 40, 42, 44, and 46 being other than a uniform material. In fact, the *Alvarado* patent fails to include the word “layer” at all in describing the *Alvarado* invention, using it only in discussing a background patent. The American Heritage® Dictionary of the English Language, Fourth Edition, defines “around” as “in such a position as to encircle or surround,” so the overlapping edges 32, 34 of the sheet described for Figure 3B of the *Alvarado* patent cannot be read as the layers of the band as claimed, because the overlapping edges are not located “circumferentially *around* the stent” and “circumferentially *around* the first layer” as recited in independent claim 36. The *Alvarado* patent fails to disclose a first layer and a second layer, the first layer located circumferentially around the stent, and the second layer attached circumferentially around the first layer as recited in independent claim 36.

Reconsideration of the rejection of independent claim 36 is respectfully requested.

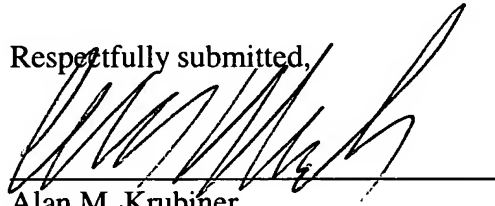
New claims

Claims 37-41 have been added herein. Claims 37 & 38, claim 39, and claims 40 & 41 depend directly or indirectly from independent claims 34, 35, and 36, respectively. Therefore, claims 37-41 include all the elements and limitations of their respective independent claims. The Applicant respectfully submits that dependent claims 37-41 are allowable over the cited reference for at least the same reason as set forth above with respect to their respective independent claims. No new matter has been added with the addition of claims 37-41.

Conclusion

For the foregoing reasons, Applicant believes all the pending claims are in condition for allowance and should be passed to issue. The Commissioner is hereby authorized to charge any additional fees which may be required under 37 C.F.R. 1.17, or credit any overpayment, to Deposit Account No. 01-2525. If the Examiner feels that a telephone conference would in any way expedite the prosecution of the application, please do not hesitate to call the undersigned at telephone (707) 543-5021.

Respectfully submitted,

A handwritten signature in dark ink, appearing to read 'Alan M. Krubiner', is written over a horizontal line.

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